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Celine Brucker

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EXAMINER

HENRY, RODNEY M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/633,613	Applicant(s) BRUCKER ET AL.	
	Examiner RODNEY M. HENRY	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-27 and 33-44 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 28-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-14, 16-27 and 33-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/4/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a final office action on the merits. Examiner acknowledges receipt of communications from the Applicant dated 6/11/2008, where Claims 1, 16, 17, 21, and 33 were amended, and claim 44 added. Claims 1, 16, 17, 21, and 33 as amended and new added claim 44 are currently pending and have been considered below.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-14, 16-27 and 33-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-14, 16-27 and 33-44, as best understood, it appears that the claimed method steps could simply be performed by mental process alone and are not statutory. Based on Supreme Court precedent ¹ and Federal Circuit decisions a §101 process must

(1) be tied to another statutory class (such as a particular apparatus) or

(2) transform underlying subject matter (such as an article or materials) to

a different state or thing. ²

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advance. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

The independent claim is directed towards steps of “providing”, “broadcasting”, “encouraging”, and “enabling”. Since the claims are directed to a process without including another statutory class of invention (manufacture, machine, composition of matter), these claims fall within the scope of human intelligence alone, and are non-statutory.

Regarding claim 33, the claim is directed to a program per se, which is considered functional descriptive material, and is not statutory. MPEP 2106.01 describes why a claim to functional descriptive material is non-statutory.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 10, 11, 14, 21, 25, 26, 33, 40, 42, 43, 44, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2,

2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), and further in view of Meyer et al. (US 6,915,271).

As per claim 1, Humpleman et al. discloses a method of marketing a mass consumer product, the method comprising:
providing retail establishments with quantities of the mass consumer product (See page 4, paragraph [0059], which discusses the coupon strategy for generating leads and for driving store traffic for the purposes of test driving Volkswagen Turbo Bug);
during the program, encouraging the consumers to request an incentive associated with a prospective purchase of the product (See page 4, paragraph [0059], which discusses; the viewer being offered \$100 for taking a test drive of the Volkswagen), and enabling consumers who visit at least one of the retail establishments to redeem the incentive at the time of obtaining the product (See page 5, paragraph [0067], which discusses the user being able to redeem offers downloaded by a viewer by having a smart card transmit the savings to in-store point of sale devices).

Humpleman et al. does not disclose broadcasting a program of at least about 10 minutes in duration, the program containing information about the mass consumer product;

However Albright discloses the use of infomercials of 10 minutes to promote products to a viewing audience. The Infomercial Awards Conference held at Las Vegas Nevada in 2000 had discussions about the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production and further

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discussed that HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add broadcasting of direct marketing programs of at least 10 minutes in duration as to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

Humpleman et al. does not disclose the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product.

However, Meyer et al. discloses the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product (See col 22, lines 52-67, and col 4, lines 32-48).

Therefore, it would have been obvious to one having ordinary skill in the art to add incentives associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes.

As per claim 10, Humpleman et al. discloses transmitting the incentive to consumers (See page 4, paragraph [0067], which discusses offers downloaded by the viewer).

As per claim 11, Humpleman et al. discloses transmitting other information about the product to the consumers along with the incentive (See page 4, paragraph [0060], which discusses links providing access to additional video messages or product information or offers).

As per claim 14, Humpleman et al., does not disclose where broadcasting the program includes broadcasting a program of approximately one half of an hour in duration.

However, Albright teaches the Infomercial Awards Conference held at Las Vegas Nevada in 2000 and the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production having broadcasting the program includes broadcasting a program of approximately one half of an hour in duration (See page 3, paragraph 4, which discusses HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include broadcasts of direct marketing programs of approximately one half of an hour in duration as taught by Albright via HSN in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

As per claim 21, Humpleman et al.,

discloses includes a coupon for purchasing the product at a reduced price and the method further comprises transmitting the coupon to the consumer (see paragraphs [0067], and [0090]).

As per claim 25, Humpleman et al., discloses the broadcasting of the

program includes broadcasting the program on television (See page 2, paragraph [0015], which discusses providing a broadcast supply of targeted advertising content in a television broadcast system).

As per claim 26, Humpleman et al., discloses the broadcasting of the

program includes broadcasting the program on on at least one of radio, television, satellite, cable, internet, CD, DVD, magnetic media, and optical media (See page 2, paragraph [0015], which discusses providing a broadcast supply of targeted advertising content in a television broadcast system).

As per claim 33, Humpleman et al. discloses a broadcast medium,:

comprising: the program comprising information about a mass consumer product which is provided in quantities to retail establishments (See page 3, paragraph [0040], which discusses content delivery via a broadcast television, page 5, paragraph [0059], discusses the coupon strategy for generating leads and for driving store traffic for the purposes of test driving Volkswagen Turbo Bug);

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wherein the program further encourages consumers to request an incentive associated with a prospective purchase of the product (See page 4, paragraph [0059], which discusses the viewer being offered \$100 for taking a test drive of the Volkswagen), the incentive being described in the program as redeemable by the consumers during a visit to at least one of the retail establishments at the time of obtaining the product (See page 5, paragraph [0067], which discusses the user being able to redeem offers downloaded by a viewer by having a smart card transmit the savings to in-store point of sale devices).

Humpleman et al. does not disclose broadcasting a program of at least about 10 minutes in duration, the program containing information about the mass consumer product;

However Albright discloses the use of infomercials of 10 minutes to promote products to a viewing audience. The Infomercial Awards Conference held at Las Vegas Nevada in 2000 had discussions about the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production and further discussed that HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add broadcasting of direct marketing programs of at least 10 minutes in duration as to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

Humpleman et al. does not disclose the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product.

However, Meyer et al. discloses the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product (See col 22, lines 52-67, and col 4, lines 32-48).

Therefore, it would have been obvious to one having ordinary skill in the art to add incentives associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes.

As per claim 40, Humpleman et al., does not disclose the program being approximately one half of an hour in duration the program.

However Albright discloses the program being approximately one half of an hour in duration the program (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add program being approximately one half of an hour in duration the program to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

As per claim 42, Humpleman et al., discloses the broadcast medium is a recording stored on at least one of digital, magnetic, and optical storage medium (See page 1, paragraph [0002], which discusses the applicability of the television systems particularly to digital systems).

As per claim 43, Humpleman et al., discloses the broadcast medium is at least one of tape, CD, and DVD (See page 5, paragraph [0070], which discusses ad content being in the form of audio (tape or CD medium), video (DVD medium) and data (tape and CD medium)).

As per claim 44, Humpleman et al. **does not disclose** tracking usage of the incentive via the unique tracking code

However, Meyer et al. discloses tracking usage of the incentive via the unique tracking code (See col 22, lines 52-67, and col 4, lines 32-48).

Therefore, it would have been obvious to one having ordinary skill in the art to add incentives associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes.

As per claim 16, Humpleman et al., does not disclose

tracking usage of the incentive further comprises tracking whether code provideç information on redemption of the incentive has been redeemed and obtaining information on consumers who redeemed the incentive.

However, Meyer et al. discloses tracking usage of the incentive further comprises tracking whether code provideç information on redemption of the incentive has been redeemed and obtaining information on consumers who redeemed the incentive (See col 21, lines 18-42).

Therefore, it would have been obvious to one having ordinary skill in the art to add tracking usage of the incentive further comprises tracking whether code provideç information on redemption of the incentive has been redeemed and obtaining information on consumers who redeemed the incentive to the system of Humpleman et al. in order to determine which incentives need to be kept active or to be changed.

As per claim 17, Humpleman et al., does not disclose

tracking usage of the incentive further comprises, generating profiles of the consumers who redeemed the incentive and categorizing the consumers based on the profiles.

However, Meyer et al. discloses tracking usage of the incentive further comprises, generating profiles of the consumers who redeemed the incentive and categorizing the consumers based on the profiles (See col 25, lines 46-64).

Therefore, it would have been obvious to one having ordinary skill in the art to add tracking usage of the incentive further comprises, generating profiles of the

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consumers who redeemed the incentive and categorizing the consumers based on the profiles to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes, and for adapting incentives to particular customers.

3. Claims 2-6, 18, 27, 34-38, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Skin Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker

As per claim 2, **Humpleman et al.**, does not disclose demonstrating how to use the product during the broadcasting of the program.

However, Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having demonstrations on how to use the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process))

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstration on how to use the product as taught by Guthy-Renker in order to provide the consumer with live demonstration on usage of the product.

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As per claim 3, **Humpleman et al.**, does not disclose demonstrating includes having at least one individual use the product.

However, Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having at least one individual demonstrate use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstration at least one individual using the product as taught by Guthy-Renker in order to provide the consumer with a live testimonial about the product.

As per claim 4, Humpleman et al., does not disclose demonstrating includes having multiple individuals use the product and describe their use of the product.

However Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having multiple individuals demonstrate use of the product and describe their use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the before and after testimonials of individuals who used the product)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstrations of multiple individuals using the product as taught by Guthy-Renker in order to provide the consumer with several live testimonials about the product.

As per claim 5, Humpleman et al. does not disclose

the individual is an individual whose likeness appears on packaging associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on packaging associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models on the brochure that is mailed along with the packaging)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on packaging associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration and usage of the product during the infomercial with the packaging material as well.

As per claim 6, Humpleman et al., does not disclose

the individual is an individual whose likeness appears on advertising material associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on advertising material associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv

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Solution, which shows the likeness of models such as Venessa Williams and Stephanie Moore on the advertising material)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on adverting material associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration, usage, and packaging of the product during the infomercial, with the advertising material as well.

As per claim 18, Humpleman et al., does not disclose the product comprises a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having a personal care product (Proactiv acne skin treatment), the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which demonstrates the three step process).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include a personal care product, the application of which is designed to occur in multiple steps, and wherein the

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information contained in the program includes at least one demonstration of the multiple steps as taught by Guthy-Renker in order to teach the customer the ease of using the product.

As per claim 27, Humpleman et al., does not disclose

the mass consumer product is at least one of a personal care product and a cosmetic product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having the mass consumer product is at least one of a personal care product and a cosmetic product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which markets the Proactive acne skin treatment).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include a personal care product as taught by Guthy-Renker in order provide the customer with personal care products.

As per claim 34, Humpleman et al., does not disclose

demonstrating how to use the product during the broadcasting of the program.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having demonstrations on how to use the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process))

Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify Humpleman et al. to include demonstration on how to use the product as taught by Guthy-Renker in order to provide the consumer with live demonstration on usage of the product.

As per claim 35, Humpleman et al., does not disclose

demonstrating includes having at least one individual use the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having at least one individual demonstrate use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstration at least one individual using the product as taught by Guthy-Renker in order to provide the consumer with a live testimonial about the product.

As per claim 36, Humpleman et al., does not disclose

demonstrating includes having multiple individuals use the product and describe their use of the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having multiple individuals demonstrate use of the product and describe their use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the before and after testimonials of individuals who used the product)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstrations of multiple individuals using the product as taught by Guthy-Renker in order to provide the consumer with several live testimonials about the product.

As per claim 37, Humpleman et al. does not disclose
disclose the individual is an individual whose likeness appears on packaging associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on packaging associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models on the brochure that is mailed along with the packaging)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on packaging associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration and usage of the product during the infomercial with the packaging material as well.

As per claim 38, Humpleman et al., does not disclose
the individual is an individual whose likeness appears on advertising material associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on advertising material associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models such as Venessa Williams and Stephanie Moore on the advertising material)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on advertising material associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration, usage, and packaging of the product

As per claim 41, Humpleman et al., does not disclose the product comprises a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having a personal care product (Proactiv acne skin treatment), the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which demonstrates the three step process).

Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify Humpleman et al. to include a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps as taught by Guthy-Renker in order to teach the customer the ease of using the product.

4. Claims 7, 8, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Total Gym Infomercial by Engineering Fitness International.

As per claim 7, Humpleman et al., does not disclose

where encouraging consumers includes providing contact information for consumers to use to request the incentive.

Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having contact information for consumers to use to request the incentive) (See Total Gym Infomercial, which shows the contact information, phone numbers and website for requesting the incentive (discounts)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include contact information for consumers to use to request the incentive as taught by EFI in order to

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provide the consumer with an incentive for purchasing the product and the means to do so.

As per claim 8, Humpleman et al., does not disclose

the contact information is at least one of a telephone number and an internet address.

Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having contact information for consumers to use to request the incentive)

(See Total Gym Infomercial, which shows the contact information, phone numbers and website for requesting the incentive (discounts)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include contact information for consumers to use to request the incentive as taught by EFI in order to provide the consumer with an incentive for purchasing the product and the means to do so.

As per claim 39, Humpleman et al., does not disclose

encouraging consumers includes providing contact information for consumers to use to request the incentive.

Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having contact information for consumers to use to request the incentive)

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(See Total Gym Infomercial, which shows the contact information, phone numbers and website for requesting the incentive (discounts)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include contact information for consumers to use to request the incentive as taught by EFI in order to provide the consumer with an incentive for purchasing the product and the means to do so.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), in view of Total Gym Infomercial by Engineering Fitness International (EFI), and further in view of Examiner's Official Notice.

As per claim 9, Humpleman et al., does not disclose that the encouraging occurs a plurality of times during the program.

Examiner takes Official Notice that it is old and well known in the art to encourage consumers several times during a television program or infomercial of incentives.

Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify Humpleman et al., to include encouraging a plurality of times during the program as taught by Examiner's Official Notice in order to ensure that the consumer makes the purchase within a short time period after listening to the infomercial, and preferably during the show.

6. Claims 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Landesmann (US 6,735,572).

As per claim 12, Humpleman et al., does not disclose

the other information includes information requested by the consumers during the request for the incentive.

Landesmann teaches buyer-driven targeting of purchasing entities having the means to allow consumers to request other information during the request for the incentive (See page 22, lines 12-14, which discusses the consumer being able to ask for information on the stores in his immediate vicinity that are offering the promotion).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include means to allow consumers to request other information during the request for the incentive as taught by

Landesmann in order to provide the consumer an interactive user experience before having to make the purchase.

As per claim 13, Humpleman et al., does not disclose that the other information includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers.

Landesmann teaches buyer-driven targeting of purchasing entities having information that includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers (See page 22, lines 12-14, which discusses the consumer being able to ask for information on the stores in his immediate vicinity that are offering the promotion).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include other information that includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers as taught by Landesmann in order to provide the consumer with the closest stores that carry the product and the promotion.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and in view of Skin

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Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker, and further in view of Baxter (US 5,335,679).

As per claim 19, Humpleman et al., does not disclose that the product comprises a hair coloring kit for performing a multi-step hair coloring process.

Baxter teaches a device and process for use in coloring hair having a hair coloring kit for performing a multi-step hair coloring process (See FIGS. 6-11)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to include the product comprises a hair coloring kit for performing a multi-step hair coloring process as taught by Baxter in order to provide customers with personal care products that includes hair care products as well.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), in view of Skin Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker, in view of Baxter (US 5,335,679), and further in view of Patel et al. (US 6,770,103).

As per claim 20, Humpleman et al., does not disclose that the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair.

Patel et al. teaches a method and composition for the gradual permanent coloring of hair comprises a hair coloring kit for performing a multi-step hair coloring process having the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair (See page 12, lines 23-27, which discusses the steps for using the hair coloring as follows: Shampoo the hair as usual. Pump the composition of the invention into the palm and mix. Apply product to the hair like a regular conditioner. Rinse the hands. Leave product in the hair for about 2 minutes for color maintenance to about 5 minutes for color change. Rinse the hair thoroughly)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to that the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair as taught by Patel et al. in order to provide customers with the option of using a wet or moist hair coloring treatment method.

9. Claims 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Von Kohorn (US 6,443,840).

As per claim 22, Humpleman et al., does not disclose where the incentive includes a rebate received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments.

Von Kohorn teaches evaluation of responses of participatory broadcast audience with prediction of winning contestants; monitoring, checking and controlling of wagering, and automatic crediting and couponing having the incentive include a rebate received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments (See column 45, lines 25-30, which discusses the viewers verifying that they are tuned in to the desired program. This

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method can be employed when discontinued items, or "loss leaders", are intended to lead customers to a store, in which case more valuable prizes are awarded for relatively easy answers. Column 74, line 31 discusses prizes as tokens. Column 132, lines 28-29 discusses token as a rebate check).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include the incentive include a rebate received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments as taught by Von Kohorn in order to provide the consumer with an added incentive of visiting a retail location where the advertised product and perhaps other products are sold.

As per claim 24, Humpleman et al., does not disclose

where the incentive includes a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments.

Von Kohorn teaches evaluation of responses of participatory broadcast audience with prediction of winning contestants; monitoring, checking and controlling of wagering, and automatic crediting and couponing having the incentive includes a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments (See column 45, lines 25-30, which discusses the viewers verifying that they are tuned in to the desired program. This method can be employed when discontinued items, or "loss leaders", are intended to lead customers to a store. Column 93, lines 47-49, which discusses gifts presented by an advertiser).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to include the incentive include a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments as taught by Von Kohorn in order to provide the consumer with gift incentives of visiting a retail location where the advertised product and perhaps other products are sold.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Packes, Jr. et. al. (US 7,006,983).

As per claim 23, Humpleman et al., does not disclose where the incentive includes a mail-in rebate certificate which is received by the consumer by mentioning the program upon obtaining the product during a visit to at least-one of the retail establishments.

Packes, Jr et al. teaches a method and system for processing a mail-in-rebate certificate (See Abstract, which discusses a point of sale (POS) rebate method and system allows a consumer purchasing a product having an associated manufacturer's mail-in rebate to redeem the rebate at the POS).

Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify the Humpleman et al., to include the incentive includes a mail-in rebate certificate which is received by the consumer by mentioning the program upon obtaining the product during a visit to at least-one of the retail establishments as taught by Packes Jr. et al. in order to provide the consumer with mail-in-rebates that can be redeemed at the POS, thereby mitigating the usual problem with rebates of missing the main-in dates or simply forgetting to mail it in.

Response to Arguments

11. The applicant's arguments are moot in light of the new grounds of rejection above.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later

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than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Henry whose telephone number is 571-270-5102. The examiner can normally be reached on Tuesday through Friday from 7:30am to 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached 570-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMH

/Arthur Duran/
Primary Examiner, Art Unit 3622
8/28/2008